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Public Disclosure Commission

**BEFORE THE WASHINGTON PUBLIC DISCLOSURE COMMISSION**

IN RE THE PETITION OF  
RICHARD L. POPE, JR.  
FOR THE REPEAL OF  
WAC 390-16-050 and 390-16-055

) DOCKET NO. \_\_\_\_\_  
)  
) PETITION FOR REPEAL  
) OF AGENCY RULES

COMES NOW Petitioner RICHARD L. POPE, JR. and submits the following Petition for Repeal of Agency Rules to the Washington Public Disclosure Commission (PDC).

**IDENTITY AND INTEREST OF PETITIONER**

Petitioner RICHARD L. POPE, JR. is an attorney practicing in Shoreline, Washington, who is actively involved in public and political affairs. Petitioner was the nominee of the Washington State Republican Party for the office of State Attorney General in 1996 and 2000. Petitioner has also been a candidate for various other public offices over the years.

In October 2000, Petitioner accepted a contribution of \$2,500.00 for his campaign for State Attorney General from the Washington State Republican Party (WSRP). The WSRP is a political action committee registered with the Federal Elections Commission (FEC) under FEC ID # C-00031088. The WSRP did not file a Form C-5 with the PDC within ten days after making this contribution, as purportedly required by WAC 390-16-050 for political committees that are registered with the FEC. WAC 390-16-055 would purportedly require Petitioner to forfeit this contribution to the State of Washington, due to this purported noncompliance.

Petitioner believes that WAC 390-16-050 and WAC 390-16-055 are contrary to the statutory provisions of Chapter 42.17 RCW, as well as being unconstitutional for many reasons.

1 **AGENCY RULES FOR WHICH REPEAL IS PETITIONED**

2 Petitioner seeks repeal of the following rules of the Public Disclosure Commission:

3 **WAC 390-16-050 Forms for contributions and expenditures of out-of-state**  
4 **or federal political committees.** The official form for the report of contributions  
5 and expenditures of political committees (a) registered with the Federal Election  
6 Commission, (b) not domiciled in Washington state, or (c) otherwise not required  
7 to report under RCW 42.17.040, 42.17.065, or 42.17.080 is designated "C-5,"  
8 revised 6/02. Copies of this form are available at the Commission Office, Room  
9 206, Evergreen Plaza Building, Olympia, Washington 98504-0908. Any paper  
10 attachments shall be on 8 1/2" x 11" white paper.

11 **WAC 390-16-055 Forfeiture of contributions received from out-of-state or**  
12 **federal political committees.** Each candidate or political committee receiving  
13 funds from a nonreporting committee (out-of-state or federal political committee)  
14 as described in RCW 42.17.090 (1)(i) shall determine whether such committee  
15 has complied with that subsection. If the nonreporting committee has not filed the  
16 required report under WAC 390-16-050, the funds shall not be forfeited or  
17 reportable as having been received if they are returned to the nonreporting  
18 committee within five business days after receipt. If an out-of-state or federal  
19 political committee fails to file a complete and timely report, the recipient shall  
20 forfeit the contribution to the state of Washington.

21 **REASONS FOR REQUESTED REPEAL OF AGENCY RULES**

22 It is important to start with the relevant text of RCW 42.17.090(1)(i), which these rules  
23 purport to enforce, and analyze this with the proper context. The overall theme of RCW  
24 42.17.090 is the contents of the report that candidates and political committees must file.

25 **42.17.090. Contents of report**

26 (1) Each report required under RCW 42.17.080 (1) and (2) shall disclose  
27 the following: ....

28 (i) Funds received from a political committee not otherwise required to  
report under this chapter (a "nonreporting committee"). Such funds shall be  
forfeited to the state of Washington unless the nonreporting committee has filed  
or within ten days following such receipt files with the commission a statement  
disclosing: (i) Its name and address; (ii) the purposes of the nonreporting  
committee; (iii) the names, addresses, and titles of its officers or if it has no  
officers, the names, addresses, and titles of its responsible leaders; (iv) the name,  
office sought, and party affiliation of each candidate in the state of Washington  
whom the nonreporting committee is supporting, and, if such committee is  
supporting the entire ticket of any party, the name of the party; (v) the ballot  
proposition supported or opposed in the state of Washington, if any, and whether  
such committee is in favor of or opposed to such proposition; (vi) the name and  
address of each person residing in the state of Washington or corporation which  
has a place of business in the state of Washington who has made one or more  
contributions in the aggregate of more than twenty-five dollars to the  
nonreporting committee during the current calendar year, together with the

1 money value and date of such contributions; (vii) the name and address of each  
2 person in the state of Washington to whom an expenditure was made by the  
3 nonreporting committee on behalf of a candidate or political committee in the  
4 aggregate amount of more than fifty dollars, the amount, date, and purpose of  
5 such expenditure, and the total sum of such expenditures; (viii) such other  
6 information as the commission may prescribe by rule, in keeping with the  
7 policies and purposes of this chapter. A nonreporting committee incurring an  
8 obligation to file additional reports in a calendar year may satisfy the obligation  
9 by filing with the commission a letter providing updating or amending  
10 information.

11 Most notably, there is absolutely no definition of "nonreporting committee" contained  
12 anywhere in Chapter 42.17 RCW, other than the circular definition contained in RCW  
13 42.17.090(1)(l) of "a political committee not otherwise required to report under this chapter".  
14 This definition is entirely unhelpful in providing any guidance as to why a political committee  
15 might not otherwise be required to report under the other provisions of Chapter 42.17 RCW, but  
16 would be required to report only under RCW 42.17.090(1)(l).

17 An analysis of the other provisions of Chapter 42.17 RCW reveals there can be no such  
18 thing as a "nonreporting political committee". If an entity meets the criteria for being a  
19 "political committee" in other sections of Chapter 42.17 RCW, then such entity must register as  
20 a "political committee" under RCW 42.17.040 and file periodic reports as required by RCW  
21 42.17.080 and RCW 42.17.090. There is not any way for an entity to be a "political committee"  
22 and not be required to register and file these periodic reports.

23 RCW 42.17.020(33) defines a "political committee" as:

24 (33) "Political committee" means any person (except a candidate or an  
25 individual dealing with his or her own funds or property) having the expectation  
26 of receiving contributions or making expenditures in support of, or opposition to,  
27 any candidate or any ballot proposition.

28 RCW 42.17.020(30) defines a "person" to be:

(30) "Person" includes an individual, partnership, joint venture, public or  
private corporation, association, federal, state, or local governmental entity or  
agency however constituted, candidate, committee, political committee, political  
party, executive committee thereof, or any other organization or group of persons,  
however organized.

RCW 42.17.040(1) requires a "political committee" to file a statement of organization  
with the PDC:

1                   **42.17.040. Statement of organization by political committees**

2                   (1) Every political committee, within two weeks after its organization or,  
3                   within two weeks after the date when it first has the expectation of receiving  
4                   contributions or making expenditures in any election campaign, whichever is  
5                   earlier, shall file a statement of organization with the commission and with the  
6                   county auditor or elections officer of the county in which the candidate resides, or  
7                   in the case of any other political committee, the county in which the treasurer  
8                   resides. A political committee organized within the last three weeks before an  
9                   election and having the expectation of receiving contributions or making  
10                  expenditures during and for that election campaign shall file a statement of  
11                  organization within three business days after its organization or when it first has  
12                  the expectation of receiving contributions or making expenditures in the election  
13                  campaign.

14                 RCW 42.17.080 requires a "political committee" to file periodic reports of contributions  
15                 and expenditures with the PDC, generally monthly, except more frequently around the times of  
16                 primary and general elections. RCW 42.17.090 specifies the contents for these periodic reports.

17                 The only exceptions to these general registration and reporting requirements are set forth  
18                 under RCW 42.17.030:

19                   **42.17.030. Applicability--Exceptions**

20                   The provisions of this chapter relating to the financing of election  
21                   campaigns shall apply in all election campaigns other than (1) for precinct  
22                   committee officer; (2) for a federal elective office; and (3) for an office of a  
23                   political subdivision of the state that does not encompass a whole county and that  
24                   contains fewer than five thousand registered voters as of the date of the most  
25                   recent general election in the subdivision, unless required by RCW 42.17.405(2)  
26                   through (5).

27                   Therefore, the only way that a "political committee" could possibly be exempt from the  
28                   registration requirements of RCW 42.17.040(1) and the reporting requirements of RCW  
29                   42.17.080 and 42.17.090 is where the "political committee" falls entirely within the exceptions  
30                   of RCW 42.17.030.

31                   Since normally precinct committee officer campaigns are not the subject of significant  
32                   campaign expenditures, and since there are very few small jurisdiction offices that would fall  
33                   within the exceptions of RCW 42.17.030(3), the normal situation in which a "political  
34                   committee" would be exempt from the registration and reporting requirements would be under  
35                   RCW 42.17.030(2), where the only campaigns the committee is involved are for federal office.

1           Simply stated, the only way a “political committee” can be a “nonreporting committee”  
2 is where it only gives money for federal elective office campaigns. However, RCW  
3 42.17.030(2) would exempt money given for federal elective office campaigns from all the  
4 requirements of Chapter 42.17 RCW. Therefore, money given by a “nonreporting committee”  
5 to be used in a campaign for federal elective office would not have to be reported under any  
6 provision of RCW 42.17.090, either by the “nonreporting committee” or by the receiving  
7 committee. Likewise, RCW 42.17.030(2) would exempt any such contribution for federal  
8 elective office campaigns from the purported forfeiture provisions of RCW 42.17.090(1)(l).

9           The plain meaning of the relevant portions of Chapter 42.17 RCW about “nonreporting  
10 committees” is as follows:

11           (1) Any “political committee” that donates money to Washington state candidates or  
12 ballot measures is required to register under RCW 42.17.040, and file periodic reports under  
13 RCW 42.17.080 and 42.17.090, and therefore cannot be a “nonreporting committee” under  
14 RCW 42.17.090(1)(l).

15           (2) Any “political committee” that donates money only to federal election  
16 campaigns, and not to any Washington state candidates or ballot measures would be exempted  
17 from Chapter 42.17 RCW pursuant to RCW 42.17.030(2), and would be a “nonreporting  
18 committee” under RCW 42.17.090(1)(l).

19           (3) The only practical way a “political committee” could be a “nonreporting  
20 committee”, as defined under RCW 42.17.090(1)(l), is if the “political committee” donated only  
21 to federal election campaigns, and was thereby fully exempted from all of Chapter 42.17 RCW  
22 by RCW 42.17.030(2).

23           (4) Since “nonreporting committees” are necessarily involved only with federal  
24 election campaigns, and thereby completely exempted from Chapter 42.17 RCW pursuant to  
25 RCW 42.17.030(2), this same exemption applies to exempt such a “nonreporting committee”  
26 from the requirements set forth in RCW 42.17.090(1)(l) to make the reports specified therein.  
27  
28

1           (5)     In addition, by definition, a "nonreporting committee" can donate funds only to  
2 be used for federal election campaigns (otherwise it would not be exempted from registration  
3 and reporting under RCW 42.17.030(2)). So any money received by the WSRP or WSDCC (or  
4 any other political committee or candidate) from a "nonreporting committee" would necessarily  
5 be only for the purpose of a federal election campaign, and therefore be exempted entirely from  
6 the application of Chapter 42.17 RCW by RCW 42.17.030(2).

7           (6)     Therefore any money received from a "nonreporting committee" cannot be  
8 subject to any of the reporting and forfeiture requirements of RCW 42.17.090(1)(I), since, by  
9 definition, such money can only be for federal election campaigns and is entirely exempted from  
10 every provision of Chapter 42.17 RCW, pursuant to RCW 42.17.030(2).

11           The PDC has made some attempt to define by regulation what it considers to be a  
12 "nonreporting committee" under RCW 42.17.090(1)(I). However, these attempted definitions  
13 do not comport with the statutory definitions in any way. Moreover, if the incorrect definitions  
14 used by the PDC were followed, many of the various political committees presently reporting to  
15 the PDC, including the two largest state political parties, would be exempted from their normal  
16 registration and reporting requirements, since these committees are also registered with the FEC.

17           WAC 390-16-050 and 396-16-060 provide as follows:

18           **WAC 390-16-050 Forms for contributions and expenditures of out-of-state**  
19 **or federal political committees.** The official form for the report of contributions  
20 and expenditures of political committees (a) registered with the Federal Election  
21 Commission, (b) not domiciled in Washington state, or (c) otherwise not required  
22 to report under RCW 42.17.040, 42.17.065, or 42.17.080 is designated "C-5,"  
revised 6/02. Copies of this form are available at the Commission Office, Room  
206, Evergreen Plaza Building, Olympia, Washington 98504-0908. Any paper  
attachments shall be on 8 1/2" x 11" white paper.

23           **WAC 390-16-055 Forfeiture of contributions received from out-of-state or**  
24 **federal political committees.** Each candidate or political committee receiving  
25 funds from a nonreporting committee (out-of-state or federal political committee)  
26 as described in RCW 42.17.090 (1)(I) shall determine whether such committee  
27 has complied with that subsection. If the nonreporting committee has not filed the  
28 required report under WAC 390-16-050, the funds shall not be forfeited or  
reportable as having been received if they are returned to the nonreporting  
committee within five business days after receipt. If an out-of-state or federal  
political committee fails to file a complete and timely report, the recipient shall  
forfeit the contribution to the state of Washington.

1           Apparently, these regulations assume that a "political committee" is somehow exempted  
2 from the registration requirements of RCW 42.17.040 and the periodic reporting requirements of  
3 RCW 42.17.080 and 42.17.090 if it is either (a) registered with the Federal Election  
4 Commission or (b) not domiciled in Washington state. Neither one of these propositions is  
5 supported in any way by Chapter 42.17 RCW.

6           First of all, there is absolutely nothing in Chapter 42.17 RCW that exempts a "political  
7 committee" from the registration and reporting requirements if it is domiciled outside  
8 Washington state. The definitions of "political committee" in RCW 42.17.020(33) and "person"  
9 in RCW 42.17.020(30) do not contain any exclusion for out-of-state entities. Nor do the  
10 registration requirements of RCW 42.17.040, or the reporting requirements of RCW 42.17.080  
11 and 42.17.090 exempt out-of-state entities in any way.

12           Therefore, if a "political committee" is domiciled outside the State of Washington, it is  
13 subject to all of the registration and reporting requirements of Chapter 42.17 RCW, just as if it  
14 was domiciled in Washington state.

15           (Obviously, an out-of-state "political committee" that does not give any money  
16 whatsoever to Washington state candidates or ballot measures would never become subject to  
17 Washington jurisdiction in the first place. The reporting and registration requirements of  
18 Chapter 42.17 RCW would obviously never become applicable to anybody, unless they spend  
19 money on Washington state candidates or elections.)

20           Similarly, there is absolutely nothing in Chapter 42.17 RCW that exempts a "political  
21 committee" from the registration and reporting requirements thereunder merely because the  
22 "political committee" has registered with the Federal Elections Commission. Nor is there  
23 anything in the Federal Elections Campaign Act, 2 U.S.C. §§ 431-455, that exempts a "political  
24 committee" from any state campaign laws merely because it has been registered with the FEC.

25           The applicable exemptions in both state and federal law have to do with whether the  
26 "political committee" is involved in campaigns only for federal elective office, as opposed to  
27 also being involved in state elective campaigns.

1 2 U.S.C. § 453 preempts state campaign finance laws for federal office campaigns:

2 **§ 453. State laws affected**

3 The provisions of this Act, and of rules prescribed under this Act,  
4 supersede and preempt any provision of State law with respect to election to  
Federal office.

5 Therefore, if a “political committee” is involved only with campaigns for federal office,  
6 no state can pass any law regulating such a “political committee” in any manner.

7 In addition, even if a “political committee” were also involved in state election  
8 campaigns, and therefore subject to state laws regarding campaign financing, 2 U.S.C. § 453  
9 would prohibit state laws from regulating such a “political committee” with respect to  
10 involvement in federal election campaigns. Only federal law can regulate such involvement.

11 RCW 42.17.030(2), which completely exempts federal election campaigns from any of  
12 the provisions of Chapter 42.17 RCW, not only has a similar effect to 2 U.S.C. § 453, but is  
13 indeed required by 2 U.S.C. § 453, in order to make sure Chapter 42.17 RCW does not apply to  
14 federal elections.

15 It must be noted that the Washington State Republican Party (WSRP) and Washington  
16 State Democratic Central Committee (WSDCC) are each registered with the FEC under the  
17 respective FEC ID #'s of C-00031088 and C-00114439. In addition to working to elect state  
18 office candidates of their respective parties, both the WSRP and WSDCC are actively concerned  
19 with federal election campaigns as well (especially for Senators and Representatives in the U.S.  
20 Congress from Washington State, and to promote each party's presidential candidates).

21 If the inappropriate PDC regulations set forth in WAC 390-16-050 and 390-16-055 were  
22 followed literally (instead of the actual relevant provisions of Chapter 42.17 RCW), both the  
23 WSRP and WSDCC would thereby be exempted from the registration requirement of RCW  
24 42.17.040 and the periodic reporting requirements of RCW 42.17.080 and 42.17.090, merely  
25 because the WSRP and WSDCC have been properly registered with the Federal Elections  
26 Commission. Presumably, other political committees involved in both state and federal election  
27 campaigns would also be exempted from PDC reporting under these same inappropriate rules.



1 WAC 390-16-050 and 390-16-055 are clearly contrary to the relevant provisions of  
2 Chapter 42.17 RCW and should be repealed. Moreover, if these inappropriate rules actually  
3 were enforced as written, they would create havoc with PDC reporting requirements. The  
4 WSRP, WSDCC and various other political committees would be exempted from their normal  
5 reporting requirements, and instead have to file frequent reports under RCW 42.17.090(1)(l)  
6 every time they donated their funds to a Washington state candidate or political committee. And  
7 candidates and political committees would be extremely tempted to avoid all of the hassles of  
8 dealing with the PDC by the simple expedient of registration with the FEC. Even if there was  
9 no actual involvement in federal campaigns, FEC registration would lift the yoke of the PDC.

10 Prior to its amendment by Laws 1989, ch. 280, § 9, RCW 42.17.090(1)(k) (the  
11 predecessor to RCW 42.17.090(1)(l) prior to its renumbering, started out by reading:

12 Funds received from a political committee not domiciled in Washington state or  
13 not otherwise required to report under this chapter (a "nonreporting committee").

14 However, there was nothing else in Chapter 42.17 RCW, even prior to the 1989  
15 amendments, that would have exempted a "political committee" from the registration and  
16 reporting requirements of Chapter 42.17 RCW, merely because it was domiciled out-of-state.

17 Thus, the prior version of former RCW 42.17.090(1)(k) merely imposed more onerous  
18 reporting requirements on out-of-state "political committees" (filing at least every ten days,  
19 instead of monthly), and the purported forfeiture required of recipients of out-of-state funds if  
20 these very stringent reporting requirements were not satisfied.

21 The 1989 Legislature very wisely removed the words "not domiciled in Washington  
22 state" from the purported forfeiture provisions of former RCW 42.17.090(1)(k). It is very  
23 difficult to see how such discrimination against out-of-state "political committees" – requiring  
24 them to report contributions and expenditures at least three times as frequently as "political  
25 committees" that are domiciled in Washington state, and imposing unique purported forfeiture  
26 requirements on recipients from funds from such out-of-state "political committees" – could  
27 possibly have survived scrutiny under constitutional equal protection guarantees.

1 Washington State Attorney General Opinion 1993-3, concerning reporting requirements  
2 imposed on "political committees", makes a rather tortured and convoluted analysis of the  
3 reporting requirements, and comes up with a result contrary to Chapter 42.17 RCW.

4 AGO 1993-3 correctly points out that a "political committee" is not subject to the  
5 requirements of Chapter 42.17 RCW if it only spends money on election campaigns in other  
6 states, and does not spend money on any election campaigns in Washington state.

7 Similarly, AGO 1993-3 correctly points out that a "political committee" can spend  
8 money on election campaigns in Washington state, without being subject to the requirements of  
9 Chapter 42.17 RCW, if the only campaigns money is spent on within Washington state are  
10 campaigns solely for federal elective office, and not state office.

11 AGO 1993-3 also correctly points out that a "political committee" domiciled outside of  
12 Washington state becomes subject to the reporting requirements of Chapter 42.17 RCW in the  
13 event the "political committee" spends any money on any campaign for Washington state  
14 elective office or on any Washington state ballot measure. Such activities would establish the  
15 "minimum contacts" required under the due process clause for Washington to exercise  
16 jurisdiction over the activities of the out-of-state "political committee".

17 AGO 1993-3 departs from the correct reading of Chapter 42.17 RCW by determining an  
18 out-of-state "political committee" is somehow not required to register with the PDC under RCW  
19 42.17.040, or file reports under RCW 42.17.080 and 42.17.090, in the event it becomes subject  
20 to Washington jurisdiction by spending money on Washington state candidates or ballot issues.  
21 AGO 1993-3 incorrectly determines that the only report such an out-of-state "political  
22 committee" is required to file is the special, frequent report required by RCW 42.17.090(1)(I).

23 AGO 1993-3 makes this conclusion based on a tortured analysis of the literal language of  
24 RCW 42.17.040(1):

25 **42.17.040. Statement of organization by political committees**

26 (1) Every political committee, within two weeks after its organization or,  
27 within two weeks after the date when it first has the expectation of receiving  
28 contributions or making expenditures in any election campaign, whichever is

1 earlier, shall file a statement of organization with the commission and with the  
2 county auditor or elections officer of the county in which the candidate resides, or  
3 in the case of any other political committee, the county in which the treasurer  
4 resides. A political committee organized within the last three weeks before an  
5 election and having the expectation of receiving contributions or making  
6 expenditures during and for that election campaign shall file a statement of  
7 organization within three business days after its organization or when it first has  
8 the expectation of receiving contributions or making expenditures in the election  
9 campaign.

10 AGO 1993-3 assumes that a hypothetical out-of-state "political committee" does not  
11 solicit any contributions from, or any make expenditures in, during the first two weeks of its  
12 existence. Therefore, since no activities are undertaken relating to Washington state in the first  
13 two weeks of its existence, AGO 1993-3 assumes the out-of-state "political committee" is never  
14 required to ever register as a "political committee" under RCW 42.17.040(1), even after it  
15 becomes actively involved in Washington state elections.

16 AGO 1993-3 makes the incorrect conclusion that such out-of-state "political committee"  
17 would never be required to file any periodic reports under RCW 42.17.080 and 42.17.090, since  
18 it failed to do anything in its first two weeks to require registration under RCW 42.17.040(1).

19 RCW 42.17.080(1) provides as follows:

20 **42.17.080. Reporting of contributions and expenditures--Inspection of  
21 accounts**

22 (1) On the day the treasurer is designated, each candidate or political  
23 committee shall file with the commission and the county auditor or elections  
24 officer of the county in which the candidate resides, or in the case of a political  
25 committee, the county in which the treasurer resides, in addition to any statement  
26 of organization required under RCW 42.17.040 or 42.17.050, a report of all  
27 contributions received and expenditures made prior to that date, if any.

28 RCW 42.17.080(2) additionally requires that periodic reports be filed by a "political  
committee", basically to be done on a monthly basis. Such reports must be filed on the  
following dates each year: (1) January 10, (2) February 10, (3) March 10, (4) April 10, (5) May  
10, (6) June 10, (7) July 10, (8) in August, 21 days before the primary, (9) in September, 7 days  
before the primary, (10) in October, 21 days before the general, (11) in October or November, 7  
days before the general, and (12) December 10.

1           Apparently, AGO 1993-3 assumes that, since it would be possible for an out-of-state  
2     “political committee” to never be required to file a statement of organization under RCW  
3     42.17.010(1), that such out-of-state “political committee” would never have to designate a  
4     treasurer, as provided for under RCW 42.17.050(1), at the time it is required to file its statement  
5     of organization. Therefore, such an out-of-state “political committee” never has to file the initial  
6     periodic report otherwise required by RCW 42.17.080(1).

7           This strained and tortured analysis of political committee registration and reporting  
8     requirements set forth in AGO 1993-3 is incorrect for a great number of reasons.

9           First of all, let us assume, for the sake of argument, that such an out-of-state “political  
10    committee” was not required to file a report under RCW 42.17.080(1), because it was somehow  
11    never required to file a statement of organization, due to fortuitously deciding not to engage in  
12    Washington state electoral politics during the first two weeks of its existence.

13          Such an out-of-state “political committee” would still be required to file all of its  
14    periodic reports under RCW 42.17.080(2), on the approximately monthly basis set forth therein,  
15    containing all of the information required by RCW 42.17.090. So even if such an out-of-state  
16    “political committee” escaped the initial registration requirements of RCW 42.17.040(1), and  
17    thereby did not have to file a report under RCW 42.17.080(1) at the time of initial registration,  
18    all of the periodic reports required under RCW 42.17.080(2) would have to be filed, on an  
19    approximately monthly basis.

20          So even if AGO 1993-3 was somehow correct in arguing that an out-of-state “political  
21    committee” which fails to engage in Washington state electoral politics during the first two  
22    weeks of its existence never has to register with the PDC under RCW 42.17.040(1), such  
23    “political committee” still has to file the normal periodic reports required by RCW 42.17.080(2).  
24    Therefore, such out-of-state “political committee” could not be considered otherwise exempt  
25    from reporting requirements and would not meet the definition of a “nonreporting committee”  
26    under RCW 42.17.090(1)(i).

1           AGO 1993-3 is just plain wrong in its conclusion that an out-of-state "political  
2 committee" which fails to engage in Washington state electoral politics during the first two  
3 weeks of its existence never has to register with the PDC under RCW 42.17.040(1). Such a  
4 result, especially with combined with the additional incorrect assumption that such out-of-state  
5 "political committee" is otherwise exempt from the normal reporting requirements of RCW  
6 42.17.080 and 42.17.090, would completely subvert the purposes of Chapter 42.17 RCW.

7           If there is any doubt as to whether an out-of-state "political committee" must register  
8 under RCW 42.17.040(1), once it becomes active in Washington state elections, even if more  
9 than two weeks have passed since it was organized, then RCW 42.17.010 provides "the  
10 provisions of [Chapter 42.17 RCW] shall be liberally construed to promote complete disclosure  
11 of all information respecting the financing of political campaigns and lobbying". Liberal  
12 construction militates in favor of the requirement for registration.

13           [Chapter 42.17 RCW] is a strongly worded mandate. Its provisions are to be  
14 "liberally construed to promote complete disclosure of all information respecting  
15 the financing of political campaigns and lobbying, and the financial affairs of  
16 elected officials and candidates, and full access to public records.... " RCW  
42.17.010; see Dawson v. Daly, 120 Wn.2d 782, 788, 845 P.2d 995 (1993).

16           Telford v. Thurston County Bd. of Com'rs, 95 Wn. App. 149, 158, 974 P.2d 886 (1999).

17           If the strained interpretation of RCW 42.17.040 and RCW 42.17.080 set forth in the  
18 AGO 1993-3 analysis were to be given effect, then almost all out-of-state "political committees"  
19 could be heavily involved in Washington state electoral politics, and generally be exempted  
20 from nearly all of the reporting requirements of Chapter 42.17 RCW.

21           The AGO 1993-3 analysis would never require such out-of-state "political committees"  
22 to file a statement of organization under RCW 42.17.040 or ever file any initial or periodic  
23 reports of contributions and expenditures under RCW 42.17.080 and 42.17.090. The only time  
24 that AGO 1993-3 would require an out-of-state "political committee" to file any sort of report  
25 would be under RCW 42.17.090(1)(i), when funds are donated to a Washington state candidate  
26 or to a Washington state "political committee".  
27  
28

1 Therefore, a "political committee" could free itself of most registration and reporting  
2 requirements under Chapter 42.17 RCW, so long as it initially organized itself outside of  
3 Washington state, and waited at least two weeks before spending money or soliciting funds in  
4 this state, so long as the "political committee" never donates any money to a Washington state  
5 candidate or political committee, but instead spends its money directly for political purposes.

6 Interestingly enough, the convoluted analysis of AGO 1993-3 would exempt both the  
7 WSRP and WSDCC from the registration requirements of RCW 42.17.040(1) and the reporting  
8 requirements of RCW 42.17.080 and 42.17.090. The WSRP and WSDCC were both  
9 established sometime during the 19<sup>th</sup> century, even prior to admission of Washington into the  
10 union as a state. Both state party organizations were therefore established long before Chapter  
11 42.17 was adopted as Initiative 276 in the November 7, 1972 election.

12 AGO 1993-3 holds that if a "political committee" is not required to register during its  
13 first two weeks of existence, then it is never required to ever register under RCW 42.17.040(1).  
14 And AGO 1993-3 further extrapolates from this premise to conclude this means that the  
15 "political committee" would never be required to do any reporting under RCW 42.17.080.

16 Chapter 42.17 RCW, including RCW 42.17.040, as adopted by Initiative 276, became  
17 effective on January 1, 1973, as provided in the effective date provisions of RCW 42.17.900.

18 Therefore, under the tortured analysis of AGO 1993-3, any "political committee" that  
19 had been in existence more than two weeks as of January 1, 1973 (the effective date of RCW  
20 42.17.040) would never be required to register with the PDC, since it was obviously impossible  
21 for such "political committee" to have registered during its first two weeks of existence (since  
22 the PDC did not yet exist, and the law requiring registration had not yet become effective).

23 Obviously, the tortured analysis of AGO 1993-3 is not only wrong, it is downright  
24 ludicrous. Washington state voters certainly intended the existing major parties (and any other  
25 "political committees" in existence prior to the 1972 election) to be subject to the registration  
26 and reporting requirements of Chapter 42.17 RCW. But AGO 1993-3 would reach the exact  
27 opposite result with its analysis.

1 While the literal text of RCW 42.17.040(1) requires a "political committee" to register  
2 with the PDC during its first two weeks of existence, such registration timing was obviously not  
3 possible for "political committees" existing prior to the adoption of Chapter 42.17 RCW.  
4 Likewise, out-of-state "political committees" could not be required to register until they have  
5 become involved in Washington state political affairs.

6 Therefore, the effective date of Chapter 42.17 RCW and becoming involved in  
7 Washington politics would each have to be implied conditions that must be satisfied, in addition  
8 to the express language of RCW 42.17.040, to require registration of a "political committee".

9 AGO 1993-3 would forever exempt such a "political committee" from ever having to  
10 register or report. This analysis is wrong. Instead, such registration requirements should merely  
11 be delayed until after the effective date of Chapter 42.17 RCW or until after the organization  
12 first becomes actively involved in Washington state elections.

13 The correct interpretation of RCW 42.17.040(1), which would serve the mandate of  
14 RCW 42.17.010 for liberal construction and complete disclosure (not to mention common  
15 sense), would be that (1) "political committees" already in existence on January 1, 1973 would  
16 be required to register with the PDC within two weeks after the January 1, 1973 effective date,  
17 and (2) out-of-state "political committees" which have not previously received contributions or  
18 made expenditures in any Washington state election campaign, would be required to register  
19 with the PDC within two weeks after first receiving contributions or making expenditures in a  
20 Washington state election campaign.

21 This correct interpretation of the RCW 42.17.040(1) registration requirements eliminates  
22 an enormous loophole in the coverage of Chapter 42.17 RCW, as well as greatly reducing the  
23 situations in which a "political committee" would be considered to be a "nonreporting  
24 committee" and thereby subject to the provisions of RCW 42.17.090(1)(1).

25 The PDC has a tradition of interpreting other confusing and conflicting provisions of  
26 Chapter 42.17 RCW in such a manner as it not be unduly arbitrary and in such a manner as will  
27 not unduly penalize candidates, "political committees", or other parties.

1 For example, "surplus funds" of a candidate are defined under RCW 42.17.020(41) to be  
2 monies left over after the election that are not need to pay off debts incurred before the election.  
3 RCW 42.17.095 would strictly prohibit such surplus funds from being used for any purposes,  
4 other than the very limited purposes allowed in that section. To spend any "surplus funds" for  
5 campaign related purposes, the candidate would purportedly be required to file a new candidate  
6 registration for the same office in the next election, as set forth under RCW 42.17.095(6).

7 This literal interpretation would prohibit a candidate from using so much as a penny of  
8 campaign funds for new expenses after the polls closed on election day, as any funds remaining  
9 would be "surplus funds" (to the extent, of course, not needed to pay debts incurred before the  
10 polls closed). The candidate would thus be barred from using campaign funds to send out thank  
11 you notes to volunteers and contributors, from keeping staff on payroll after election day, from  
12 renting a campaign headquarters after election day, or even holding an election night party.

13 However, other provisions of Chapter 42.17 RCW are in conflict with these surplus  
14 funds provisions, and make them somewhat ambiguous. For example, RCW 42.17.080(2)  
15 provides for a campaign to file a final report when "there is no outstanding debt or obligation,  
16 the campaign fund is closed, and the campaign is concluded in all respects". This provision  
17 recognizes the possibility that a campaign might desire to "wrap-up" after the election (thank  
18 you letters, storing materials, maintaining databases, holding an election night party, etc.) by  
19 incurring new expenses, rather than merely paying old debt.

20 And RCW 42.17.125(2) allows for individuals to be reimbursed for "direct out-of-pocket  
21 election campaign and postelection campaign related expenses". This provision recognizes that  
22 campaign funds can be legitimately spent on new postelection campaign related expenses,  
23 instead of only paying off debts that were incurred prior to the election. And if individuals can  
24 be reimbursed for such expenses, the campaign surely should be allowed to pay these directly.

25 Therefore, while RCW 42.17.020(41) and RCW 42.17.095 would appear to prohibit  
26 campaign funds to be used for new expenses that are incurred after the general election, RCW  
27 42.17.125(2) and RCW 42.17.080(2) would appear to recognize such postelection campaign  
28



1 related expenses to be allowed. Based on this analysis, the PDC has never interpreted RCW  
2 42.17.095 to prohibit a candidate from incurring new expenses after the general election that are  
3 reasonably related to the prior campaign, and has never enforced this law as strictly as written.

4 Similarly, the various provisions of Chapter 42.17 RCW that would relate to the  
5 purported forfeiture provisions of RCW 42.17.090(1)(l) are, at best, extremely conflicting, and  
6 subject to many possible interpretations. It would be extremely unfair to the candidates or  
7 political committees who receive funds from other political committees to be required to forfeit  
8 them, simply because some argument can be made that the contributing political committee  
9 might somehow meet the mysterious and unclear definition of a "nonreporting committee" and  
10 did not file its own reports. However, the agency rules in question purport to require forfeiture.

11 Moreover, statutory construction requires that any ambiguity in a punitive statute be  
12 resolved against the State and in favor of the defendant. Seattle v. Green, 51 Wn.2d 871, 874,  
13 322 P.2d 842 (1958); State v. Thompson, 38 Wn.2d 774, 779, 232 P.2d 87 (1951).

14 RCW 42.17.090(1)(l) is a punitive statute. Not only would candidates and political  
15 committees be subject to the normal civil fines for accepting contributions from a so-called  
16 "nonreporting committee", but would also be required to forfeit these same contributions to the  
17 state general fund if the so-called "nonreporting committee" failed to promptly file the special,  
18 frequent report as required. Indeed, RCW 42.17.090(1)(l) appears to be the only provision  
19 anywhere in Chapter 42.17 RCW that would require forfeiture of campaign funds to the state.

20 At best, Chapter 42.17 RCW is ambiguous as to exactly what a "nonreporting  
21 committee" would be. Moreover, it is ambiguous as to whether such a "nonreporting  
22 committee" could ever make any non-federal contributions that would be subject to Chapter  
23 42.17 RCW in the first place. All such ambiguities must be resolved against the state and its  
24 request to forfeit funds from "nonreporting committees".

25 Moreover, RCW 42.17.090(1)(l) is unconstitutional, since it is vague as to what exactly  
26 would constitute a "nonreporting committee". That term is not defined with any specificity by  
27 statute, and it is anyone's guess as to exactly what it means. Even the PDC, which should have  
28

1 some expertise in the matter, has been unable to define by regulation (much less by regulation  
2 complying with relevant statutes) what a “nonreporting committee” could be. People of  
3 ordinary intelligence have to guess at its meaning.

4 This conclusion is significant in the present case, not to determine  
5 whether the requirements of RCW 42.17.100(1) are per se contrary to First  
6 Amendment guarantees, but because a stricter vagueness standard is applicable in  
7 First Amendment areas. See State v. Galbreath, 69 Wn.2d 664, 667, 419 P.2d  
800 (1966). As stated in Bare v. Gorton, *supra* 84 Wn.2d at 385, 526 P.2d at  
382:

8 (First Amendment rights), it must be remembered, are 'delicate and vulnerable, as  
9 well as supremely precious in our society.' National Ass'n for the Advancement  
10 of Colored People v. Button, 371 U.S. 415, 433, 83 S.Ct. 328, 338, 9 L.Ed.2d  
405 (1963). First Amendment rights are not to be abridged or even chilled by  
11 statutory vagueness. Baggett v. Bullitt, 377 U.S. 360, 84 S.Ct. 1316, 12 L.Ed.2d  
377 (1964). Any legislative impingement on these rights must be drawn with  
precision and narrow specificity.

12 Keyishian v. Board of Regents, 385 U.S. 589, 87 S.Ct. 675, 17 L.Ed.2d 629  
(1967).

13 The United States Supreme Court reiterated this principle in Buckley v.  
14 Valeo, *supra*, when, after mentioning the criminal, 'ordinary intelligence'  
15 standard for vagueness, it stated that '(w)here First Amendment rights are  
involved, an even 'greater degree of specificity' is required.' Buckley v. Valeo,  
16 *supra* at 96 S.Ct. 662, *quoting* Smith v. Goguen, 415 U.S. 566, 573, 94 S.Ct.  
1242, 39 L.Ed.2d 605 (1974)

17 State ex rel. Public Disclosure Commission v. Rains, 87 Wn.2d 626, 630, 555 P.2d 1368 (1976).

18 The Rains decision invalidated a prior version of RCW 42.17.100, relating to reporting  
19 independent expenditures, because the statute failed to specify a time limit for filing these  
20 reports. The statute therefore was vague and stricken as unconstitutional. Even though the PDC  
21 adopted a regulation clearly specifying a time limit for filing the reports, this could not cure the  
22 problem with vagueness.

23 RCW 42.17.090(1)(l) is unconstitutionally vague, since nothing in RCW 42.17.090(1)(l)  
24 or elsewhere in Chapter 42.17 RCW defines with any precision the circumstances under which a  
25 “political committee” would not otherwise be required to file reports under Chapter 42.17 RCW,  
26 and would therefore meet the definition of “nonreporting committee”.

1 Under Rains, the PDC lacks any authority to adopt regulations, no matter how clear these  
2 regulations are, to cure problems with vague statutes. And even assuming, for the sake of  
3 argument, the PDC could adopt regulations to cure the vague definition of “nonreporting  
4 committee”, the actual regulations adopted by the PDC in WAC 390-16-050 and 396-16-060 do  
5 not provide any clear guidance as to when a “political committee” would not otherwise be  
6 required to report, nor do they even adhere to the statutory language.

7 Finally, application of RCW 42.17.090(1)(l) would be in violate of the equal protection  
8 clauses of the federal and state constitutions, even if RCW 42.17.090(1)(l) could be otherwise  
9 interpreted to actually require forfeitures.

10 RCW 42.17.090(1)(l) makes two crucial distinctions between a (normal) “political  
11 committee” that is otherwise required to file reports under Chapter 42.17 RCW, and a  
12 “nonreporting committee” that, for whatever reason, is not otherwise be required to report under  
13 Chapter 42.17 RCW:

14 (1) **Forfeiture provisions**

15 A candidate or political committee that receives funds from a “nonreporting committee”  
16 must forfeit these funds to the state general fund, if the “nonreporting committee” does not file a  
17 special report with the PDC concerning the contribution within ten days of making the  
18 contribution.

19 The candidate or political committee receiving funds from the “nonreporting committee”  
20 must still forfeit these funds, even if the receiving candidate or political committee timely files  
21 its own proper reports with the PDC.

22 By contrast, a candidate or political committee that receives funds from a “normal”  
23 political committee, that is otherwise required to file reports with the PDC, will never forfeit  
24 these contributions to the state general fund, or otherwise be penalized in any way, even if the  
25 political committee making such contributions never files any reports with the PDC whatsoever,  
26 and even if the contributing committee never bothers to register at all with the PDC.

Moreover, a candidate or political committee that receives funds from a "normal" political committee will not be required to forfeit any contributions to the state general fund, even if the receiving candidate or political committee also does not bother to file its own reports with the PDC. While the receiving candidate or committee can be fined for nonreporting, forfeiture is not an option.

## **(2) Frequency of Reporting**

A normal "political committee", that is otherwise required to file reports with the PDC, must file reports of contributions and expenditures twelve times per year (an average of once per month) under RCW 42.17.080(2) on the following dates: (1) January 10, (2) February 10, (3) March 10, (4) April 10, (5) May 10, (6) June 10, (7) July 10, (8) in August, 21 days before the primary, (9) in September, 7 days before the primary, (10) in October, 21 days before the general, (11) in October or November, 7 days before the general, and (12) December 10.

Except for the pre-primary and pre-general reports, the normal "political committee" would file these reports ten days after the close of the previous month. The pre-primary and pre-general reports are filed either seven days or one day after the close of those reporting periods.

By contrast, the so-called "nonreporting committee", that is somehow not otherwise required to file reports with the PDC, must file these same reports with a far greater frequency under RCW 42.17.090(1)(l), than would be required under RCW 42.17.080(2), in order to avoid the spectre of the candidates and political committees to which it donates funds being required to forfeit these funds to the state.

As RCW 42.17.090(1)(l) purports to require recipients to forfeit funds if the "nonreporting committee" does not file the required report with the PDC within ten days of making the contribution, such "nonreporting committee" must file reports with the PDC at least every ten days, if it wishes its contributions not to have to be forfeited.

In fact, if it there is a day or more of lag time that accrues between making a contribution and being able to transmit the report to the PDC, such a "nonreporting committee" may in fact be required to file such reports with the PDC somewhat more frequently than every 10 days.

1 At the very minimum, such a so-called "nonreporting committee" would be required to  
2 file the same reports with the PDC at least three times as frequently as a "normal" political  
3 committee otherwise required to file PDC reports.

#### 4 Equal Protection Analysis

5 Even when statutes do not affect a fundamental rights or create suspect classifications,  
6 they must be evaluated on a rational basis standard to survive an equal protection challenge.  
7 City of Richland v. Michel, 89 Wn. App. 764, 950 P.2d 10 (1998). Rational basis means that a  
8 statute is rationally related to some legitimate state interest. Seeley v. State, 132 Wn.2d 776, 940  
9 P.2d 604 (1997).

10 Political contribution and expenditure laws obviously involve fundamental constitutional  
11 rights, and are subject to a much higher level of scrutiny than the rational basis test. But the  
12 distinctions set up by RCW 42.17.090(1)(i) fail to meet even the lenient rational basis test.

13 First of all, there is absolutely no rational reason why a "nonreporting committee" not  
14 otherwise required to file reports with the PDC should be required to report its contributions and  
15 expenditures three times more frequently than a political committee otherwise required to report.

16 At most, a so-called "nonreporting committee" should be required to report contributions  
17 and expenditures at the same intervals of approximately one month under RCW 42.17.080(2) for  
18 "normal" political committees that are generally required to file reports with the PDC.

19 Certainly, it could be even rational to require these so-called "nonreporting committees"  
20 to file reports of their contributions and expenditures with the PDC with less frequency than  
21 "normal" political committees.

22 But by no stretch of the imagination could it possibly be considered rational to require a  
23 so-called "nonreporting committee" to file reports more frequently than a "normal" political  
24 committee, much less three times as frequently.

25 Even more importantly, the forfeiture provisions set forth in RCW 42.17.090(1)(i) are  
26 even more irrational. How can it possibly be rational to require a recipient of funds from a so-  
27 called "nonreporting committee" to forfeit these funds to the state general fund, when such  
28

1 "nonreporting committee" fails to timely file a required report of its financial affairs timely with  
2 the PDC?

3 Recipients of funds from "normal" political committees that are otherwise required to  
4 file reports with the PDC are never required to forfeit those contributions to the state, even if the  
5 "normal" political committee never fails to follow its requirement to make reports to the PDC.

6 This drastic distinction in treatment of contributions from so-called "nonreporting  
7 committees" and "normal" political committees is not rational and does not serve any legitimate  
8 state interest whatsoever.

9 Obviously, the State of Washington has an interest in making sure political contributions  
10 and expenditures are accurately reported. But this interest is not served by requiring innocent  
11 recipients of funds from "nonreporting committees" to forfeit their funds to the state when the  
12 contributor fails to timely file a required report with the PDC, while not imposing any sanction  
13 or consequences whatsoever on the innocent recipient of funds from a normal political  
14 committee failing to file similar PDC reports.

15 This drastic distinction becomes even more irrational when a recipient of funds from a  
16 normal political committee will only be fined for failing to file its own PDC reports, while the  
17 recipient of funds from a so-called "nonreporting committee" forfeits the entire contribution to  
18 the state if the donor does not timely file, even if recipient files every one of its own required  
19 reports timely with the PDC.

20 However, a much higher standard of scrutiny applies here, since political campaigns  
21 involve a fundamental constitutional right. For these drastic distinctions to survive an equal  
22 protection challenge, the state must overcome strict scrutiny and demonstrate these distinctions  
23 are narrowly tailored to serve overriding state interests:

24 Restrictions on expenditures, on the other hand, "preclude [] most  
25 associations from effectively amplifying the voice of their adherents, the original  
26 basis for the recognition of First Amendment protection of the freedom of  
27 association." *Id.* (citing NAACP v. Alabama, 357 U.S. 449, 460, 78 S. Ct. 1163,  
28 2 L. Ed. 2d 1488 (1958)). The Court said that FECA's "constraints on the ability  
of independent associations and candidate campaign organizations to expend  
resources on political expression 'is simultaneously an interference with the

1 freedom of [their] adherents[.]' " Buckley, 424 U.S. at 22 (*quoting Sweeny v.*  
2 New Hampshire, 354 U.S. 234, 250, 77 S. Ct. 1203, 1212, 1 L. Ed. 2d 1311  
3 (1957)).

4 The Court concluded that while both FECA's contribution and  
5 expenditure limitations implicate fundamental First Amendment interests, the  
6 expenditure limitations "impose significantly more severe restrictions on  
7 protected freedoms of political expression and association than do its limitations  
8 on financial contributions." Buckley, 424 U.S. at 23. The Court said that the  
9 primary First Amendment problem with the limitations on contributions was the  
10 restriction on the right of freedom of political association. *Id.* at 24. Although  
11 this is a basic constitutional freedom " 'closely allied to freedom of speech' " and  
12 lying at the " 'foundation of a free society[.]' " and thus subject to "the closest  
13 scrutiny[.]" the Court said that " [n]either the right to associate nor the right to  
14 participate in political activities is absolute." " *Id.* at 25 (*quoting Shelton v.*  
15 Tucker, 364 U.S. 479, 486, 81 S. Ct. 247, 5 L. Ed. 2d 231 (1960) and NAACP,  
16 357 U.S. at 460 and United States Civil Serv. Comm'n v. National Ass'n of Letter  
17 Carriers, 413 U.S. 548, 567, 93 S. Ct. 2880, 37 L. Ed. 2d 796 (1973)). The Court  
18 continued: "Even a 'significant interference' with protected rights of political  
19 association' may be sustained if the State demonstrates a sufficiently important  
20 interest and employs means closely drawn to avoid unnecessary abridgment of  
21 associational freedoms." *Id.* at 25 (*quoting Cousins v. Wigoda*, 419 U.S. 477, 95  
22 S. Ct. 541, 42 L. Ed. 2d 595 (1975)).

23 However, as to expenditures, which involve core political speech, strict  
24 scrutiny applies. Buckley, 424 U.S. at 44-45; *see McIntyre v. Ohio Elections*  
25 Comm'n, 514 U.S. 334, 347, 115 S. Ct. 1511, 131 L. Ed. 2d 426 (1995) ("[w]hen  
26 a law burdens core political speech, we apply 'exacting scrutiny,' and we uphold  
27 the restriction only if it is narrowly tailored to serve an overriding state interest").  
28 This standard applies to political speech concerning election issues as well as to  
political speech concerning candidates for office, as both are core political  
speech.

29 Washington St. Republican Party v. Washington St. Public Disclosure Com'n, 141 Wn.2d 245,  
30 256-57, 4 P.3d 808 (2000).

31 There is obviously no way for these irrational distinctions to survive the much more  
32 exacting strict scrutiny standard that applies in political matters. If RCW 42.17.090(1)(l) is  
33 interpreted to require forfeiture of contributions, such interpretation would fail the constitutional  
34 test of equal protection, regardless of whether the deferential rational basis test is employed, or  
35 the exacting strict scrutiny test applicable to fundamental rights is applied. WAC 390-16-050  
36 and WAC 396-16-055, which purport to require such forfeitures, are likewise unconstitutional.

37 The PDC should simply repeal WAC 390-16-050 and WAC 396-16-055. As pointed out  
38 in the statutory analysis on Pages 2 to 6 above, there is simply no possible way that a "political  
committee" can make a contribution for Washington state elective office or ballot measures, and

1 not be required to register as a "political committee" under RCW 42.17.040. The PDC should  
2 require any political committees which are currently using the inappropriate Form C-5 to report  
3 contributions to Washington state candidates and PDC-registered political committees to instead  
4 register with the PDC as a "political committee" under RCW 42.17.040 and file periodic reports  
5 of contributions and expenditures under RCW 42.17.080 and RCW 42.17.090.

6 Perhaps the PDC feels that the normal reporting requirements are too burdensome on  
7 out-of-state political committees with only modest involvement in Washington state politics, or  
8 on political committees that are primarily interested in federal elections. Literal application of all  
9 of the reporting requirements can be extremely burdensome, for sure. Obviously, it would not  
10 be a major problem for political committees currently reporting on Forms C-5, as purportedly  
11 required by WAC 390-16-050, to report substantially the same information about their political  
12 committees on a Form C-1PC registration in accordance with RCW 42.17.040.

13 The major difference between the information required to be reported pursuant to RCW  
14 42.17.080 and 42.17.090, and the information purportedly required to be reported on Form C-5  
15 under WAC 390-16-050, is that the former includes all contributions received and expenditures  
16 made by the political committee (regardless of from where received or to where made), and the  
17 latter only includes contributions received from and expenses made in the State of Washington.

18 Perhaps a so-called out-of-state political committee may deem it overly burdensome to  
19 report each contribution received from anywhere in the nation over \$25.00, and every expense of  
20 over \$50.00 incurred anywhere in the nation, if the political committee has only a modest level  
21 of involvement in Washington state politics. The proper remedy is RCW 42.17.370(10), which  
22 allows the PDC to suspend normal reporting requirements, after application and hearing, if a  
23 candidate, political committee, office holder, lobbyist, or other party required to report with the  
24 PDC establishes that the normal reporting requirements work manifestly unreasonable hardship.  
25 The PDC has adopted rules under Chapter 390-28 WAC to efficiently conduct such hearings.

26 Aside from the forfeiture implications when read in conjunction with WAC 390-16-055,  
27 WAC 390-16-050 has the effect of exempting certain political committees, namely committees  
28



1 domiciled outside the state of Washington or registered with the FEC, from the normal reporting  
2 requirements under RCW 42.17.080 and 42.17.090. WAC 390-16-050 effectively requires such  
3 committees to file reports only when they make contributions to candidates or committees in the  
4 state of Washington, rather than doing so approximately monthly as normally required by RCW  
5 42.17.080(2). WAC 390-16-050 also exempts such committees from having to report any  
6 contributions received from or expenditures made outside of the state of Washington.

7 Obviously, it could be understandable that the PDC, after application and hearing, might  
8 decide to modify normal reporting requirements of certain out-of-state political committees to  
9 require reporting only after activity is conducted in Washington, rather than every month, and to  
10 only report Washington contributions and expenditures. For example, the Republican and  
11 Democratic National Committees receive many thousands of separate contributions, and make  
12 many thousands of separate expenditures, only a small portion of which is from the state of  
13 Washington. It might be appropriate to limit their reporting to only their Washington activity.

14 RCW 42.17.370(10) is extremely clear that the PDC cannot modify the reporting  
15 requirements for anybody, except after application and hearing. Such modifications can only be  
16 made upon showing clear and convincing proof of manifestly unreasonable hardship, and can be  
17 only to the extent necessary to substantially relieve the hardship. The initial application must be  
18 heard through a formal hearing, and not by brief adjudicative proceeding, and any renewal must  
19 also be by formal hearing, if more than three years has passed since conducting a formal hearing.  
20 Any citizen may contest the propriety of a PDC order modifying the reporting requirements by  
21 filing suit in Thurston County Superior Court within one year after the PDC entry of such order.

22 WAC 390-16-050 therefore violates RCW 42.17.370(10), since it purports to modify the  
23 reporting requirements for certain political committees that would otherwise be required to file  
24 complete periodic reports under RCW 42.17.080 and 42.17.090, by doing so by administrative  
25 regulation automatically applicable to political committees domiciled outside of the state of  
26 Washington or registered with the FEC, instead of through an individualized formal hearing  
27 process initiated by application of an aggrieved committee, with the opportunity for an appeal.


1 WAC 396-16-055 must be repealed in its entirety, since there are not any permissible  
2 circumstances under which recipients of funds from any so-called "nonreporting committee"  
3 could be required to forfeit these contributions to the state of Washington. The plain statutory  
4 analysis would show that the only actual type of "nonreporting committee" would be one that is  
5 interested only in federal elections, and contributions related to federal elections would entirely  
6 be exempted from the coverage of Chapter 42.17 RCW under both RCW 42.17.030(2) and 2  
7 U.S.C. § 453. Even if the provisions of Chapter 42.17 RCW could be construed to require that a  
8 forfeiture of campaign contributions take place under certain circumstances, this result would  
9 violate constitutional guarantees against vagueness and for equal protection of the laws.

10 Since WAC 396-16-050 and WAC 396-16-055 each violate the relevant provisions of  
11 Chapter 42.17 RCW, as well as constitutional guarantees against vagueness and for equal  
12 protection of the laws, they must be repealed. Since reporting requirements cannot be modified  
13 by PDC regulation, there is no reason for amending WAC 396-16-050 to contain any different  
14 provisions modifying reporting requirements for certain political committees. Since forfeiture  
15 of campaign contributions is not permissible under either statutory or constitutional analysis,  
16 there is no basis to retain the forfeiture provisions of WAC 396-16-055 using different language.

### 17 CONCLUSION

18 Petitioner would respectfully request the PDC to suspend any existing enforcement  
19 proceedings concerning WAC 396-16-050 and WAC 396-16-055, initiate rule-making  
20 proceedings in accordance with Chapter 34.05 RCW, and repeal these rules in their entirety.

21 Respectfully submitted on August 4, 2002.

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